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BY E-FILE

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: *North American Freight Car Association v. Union Pacific Railroad Company*, STB Docket No. 42119

Dear Ms. Brown:

This letter responds to the March 23, 2012, letter from North American Freight Car Association ("NAFCA") regarding claims that Union Pacific Railroad Company ("UP") revealed positions taken by NAFCA in the parties' confidential dispute resolution communications.

NAFCA does not dispute that two of the matters that NAFCA falsely accused UP of revealing actually appear in NAFCA's complaint. With regard to the third matter – namely, NAFCA's position that UP cannot hold the customer responsible for the presence of lading residue on the railcar's exterior once UP moves a car from a customer facility – NAFCA provides a fundamentally inconsistent response. On the one hand, NAFCA says that "UP does not deny" that the matter was discussed as "part of the parties' negotiations." On the other hand, NAFCA denies that it took that position at any point in this proceeding.

UP will not reveal the parties' confidential settlement discussions, but it should surprise no one if issues raised in NAFCA's complaint were also "part of the parties' negotiations."¹

¹ UP has already pointed to the statements in NAFCA's complaint where NAFCA appears to take the position that UP cannot hold a customer responsible for exterior lading residue once UP accepts the car for transportation. Furthermore, there seems little else to conclude from NAFCA's statement that because of UP's obligation to conduct pre-departure inspections, (continued...)

COVINGTON & BURLING LLP

Ms. Cynthia T. Brown

March 28, 2012

Page 2

Ultimately, UP agrees with NAFCA that the confidentiality issue is not a "major point in this case." However, UP takes extremely seriously the importance of maintaining confidentiality of settlement discussions, and it will not hesitate to respond to false accusations that it failed to abide by its obligations.

Sincerely,



Michael L. Rosenthal
*Counsel for Union Pacific
Railroad Company*

cc: Andrew P. Goldstein
John M. Cutler, Jr.

UP is "forfeiting its ability to argue that the cars were not safe for transportation when placed in a train by UP." (NAFCA Opening at 10.)